

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the:

Appeal from the Board of Stewards
Rulings #9 and #10, Capitol Racing
Association, dated April 24, 2000.

JEFFREY BOYD and
CORRINE HILLS-BOYD

Appellants.

Case No. SAC-00-034

OAH No. N2000070526

PROPOSED DECISION

William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, heard this matter on September 5, 2000, in Sacramento, California.

Diana L. Cuomo, Deputy Attorney General, represented the California Horse Racing Board ("Board").

David M. Shell, Attorney at Law, represented Jeffrey Boyd and Corrine Hills-Boyd ("appellants"), who were also present.

The evidence was limited to the documentary record and the parties submitted written arguments. Appellant's closing brief was due September 20, 2000, but not received until September 27, 2000. It was marked for identification as Exhibit 7. Time was extended for submission of the Board's responsive brief, which was received on October 10, 2000. It was marked for identification as Exhibit 8. Appellant's reply brief was due October 20, 2000, but none was received and no explanation provided. The matter was deemed submitted on October 20, 2000.

PROCEDURAL BACKGROUND

On February 24, 2000, the Board filed complaints against appellant Jeffrey Boyd (licensed horse trainer) and appellant Corrine Hills-Boyd (groom having care and attendance of horse) alleging violations of the Board's equine medication regulatory scheme. The

complaints resulted from a positive drug test for a prohibited substance, Heptaminol, following a race on February 9, 2000, in which the tested horse finished first.

On March 3, 2000, the Board of Stewards held a consolidated hearing on the complaints and received both oral and documentary evidence. On April 24, 2000, the Board of Stewards issued Rulings #9 and #10 in separate Statements of Decision as to each appellant.¹ In Ruling #9 appellant Jeffrey Boyd (“JB”) was found in violation of California Horse Racing Board (“CHRB”) Rules #1887(a) (Trainer to ensure condition of horse) and #1859.5 (Disqualification upon positive test finding). Appellant Jeffrey Boyd was ordered suspended for ninety days, from April 28 through July 26, 2000. In Ruling #10 appellant Corrine Hills-Boyd (“CH-B”), as the groom in care and attendance of the horse, was found in violation of the same CHRB Rules and ordered suspended for one hundred and eighty days, from April 28 through October 24, 2000.

The Statements of Decision included Findings of Fact and Conclusions, which are summarized below:

1. JB is the licensed horse trainer of the tested horse.
2. CH-B is the licensed groom responsible for the care and attendance of the same horse.
3. On February 6, 2000 at approximately 10:00 a.m., CH-B administered by injection 20cc of Kynoselen to the horse for medical reasons.
4. Kynoselen contains Heptaminol, a prohibited substance
5. On February 9, 2000, the tested horse raced in and won the first race at Los Alamitos.
6. Following the race, a urine sample taken from the horse was examined by a Board approved laboratory and determined to contain Heptaminol, a prohibited substance.
7. A subsequent examination of the split test sample at the request of the horse owners confirmed the presence of Heptaminol.

Appellants timely appealed the Board of Steward’s rulings and are entitled to the instant hearing.

¹ The Board of Stewards in its Statement of Decision relating to Jeffrey Boyd also issued Ruling #11, which summarily disqualified the tested horse for violation of California Horse Racing Board Rules #1843(a), (b) and (d) (Medication, Drugs and other Substances) and #1859.5 (Disqualification Upon Positive Test Finding) and ordered return of all purse money earned. This ruling was not appealed by either appellant.

ISSUES PRESENTED

1. Is there substantial evidence to support the findings and rulings of the Board of Steward's as to each appellant? Yes.
2. May a licensed trainer and/or the licensed groom of a horse be disciplined by the Board if the horse tests positive for a prohibited substance, regardless of the time of administration? Yes.
3. May the Board impose a penalty for an equine medication violations in the absence of Board adopted regulations providing specific penalties for such violations? Yes.

STANDARD OF REVIEW

The standard of review in this matter is similar to that exercised by the superior court when reviewing an administrative agencies decision under Code of Civil Procedure section 1094.5. (*In the Matter of the Appeal of John Martin*, CHRB Case No. SAC98-029, OAH No. N1998070295, p.9; *In the Matter of the Appeal of Brian Koriner*, CHRB Case No. SAC98-033, OAH No. N1998070296, p.7).

Section 1094.5(b) provides that the superior court determines whether the agency engaged in an abuse of its discretion. An abuse of discretion may be shown if the Board "has not proceeded in the manner required by law (without or in excess of jurisdiction), the order or decision is not supported by the findings, or the findings are not supported by the evidence". It is the burden of appellant to demonstrate that the agency has, in fact, abused its discretion. (*Holmes v. Hallinan* (1998) 68 Cal.App.4th 1523, 1535).

In determining whether the evidence supports the findings or an order or decision is supported by the findings, the court uses the "substantial evidence test". (*Jones v. Superior Court* (1981) 114 Cal.App.3d 725, 730; Code of Civil Procedure section 1094.5(c)). Under this test an abuse of discretion is established if the Board's findings upon review of the whole administrative record, are not supported by the evidence.

STATUTORY AND REGULATORY BACKGROUND

California regulates horse racing within the state through its plenary power, which has been delegated to the Board. (*Lavin v. California Horse Racing Board* (1997) 57 Cal.App.4th 263, 268). The Horse Racing Law (Business and Professions Code sections 19400 et seq.) vests the Board with its responsibility and authority for the oversight, supervision and enforcement of all horse racing in the state. All licenses issued by the Board are subject to the "rules, regulations and conditions" prescribed by the Board. (Business and Professions Code section 19460). Licenses are subject to suspension or revocation where the Board has

reason to believe that any condition of the license has not been complied with or that any law, rule or regulation of the Board has been broken or violated. (Business and Professions Code section 19461)

Authority for the imposition of penalties is found within Title 4, California Code of Regulations (“CCR”) sections 1405, 1528 and 1887. CCR section 1405 provides that violation of any provision of the CHRB Rules, “whether or not a penalty is fixed therein, is punishable in the discretion of the Board by revocation or suspension of any license, by fine, or by exclusion from all racing enclosures under the jurisdiction of the Board, or by any combination of these penalties.”

CCR section 1528 provides that the stewards “may suspend the license of anyone whom they have authority to supervise or they may impose a fine or they may exclude from all enclosures in this State or they may suspend, exclude and fine.”

CCR section 1887 (Trainer to Insure Condition of Horse) states in pertinent part that:

“(a) The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. If the chemical or other analysis of urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of his division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off.”

The Board regulates the administration of all medications and drug substances to horses participating in races. (CCR section 1843 et seq.; Business and Professions Code sections 19580, 19581 and 19582). CCR section 1843 (Medication, Drugs and other Substances) states that:

“It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context:

- (a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided.
- (b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules.
- (c) No person other than a licensed veterinarian or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except

such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labeled.

(d) A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance, or a finding of a drug substance in excess of the limit established by the Board for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse.”

CCR section 1843.1 (Prohibited Drug Substances) provides that:

“For purposes of this division, prohibited drug substance means:

(a) any drug, substance, medication or chemical foreign to the horse, whether natural or synthetic, or a metabolite or analog thereof, whose use is not expressly authorized in this article.

(b) any drug, substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in this article.”

Business and Professions Code section 19580 provides a statutory basis for the adoption of regulation to establish policies, guidelines and penalties for the imposition of penalties relating to equine medication for the purpose of preserving and enhancing the integrity of horse racing in the State.

Business and Professions Code section 19851 prohibits the administration of any substance to a horse after it has been entered in a race (48 hours prior to race time), unless specifically authorized by regulation.

Business and Professions Code section 19582 provides for penalties based on the nature of the violations of section 19581. These penalties include suspension for up to three years, monetary penalties of not more than \$10,000 and disqualification of purses.

DISCUSSION

Issue #1. Is there substantial evidence to support the findings and rulings of the Board of Stewards as to each appellant?

At the hearing before the Board of Stewards, appellants stipulated to the admission of sixteen exhibits into evidence. These exhibits pertained to the jurisdictional documents and notices of hearing, the licensing history of each appellant, the laboratory test results including chain of custody of the sample tested, the racing schedule, declarations from individuals involved in the obtaining of the test sample and declarations (admissions) by appellants. The transcript reveals that both appellants were present and that each exhibit was

specifically identified on the record. Steward Latzo inquired of each appellant “Are you willing to stipulate to the evidence and exhibits that Mr. Mezquita announced earlier?” Each appellant answered in the affirmative. At the beginning of the hearing Mr. Mezquita announced on the record “Let it be known that both Jeff and Corrine Boyd [appellants] have stipulated to all exhibits, 1 through 16.”

A stipulation that is assented to is a recognized legal means of expressing agreement as to a variety of matters about which there is generally no dispute. Stipulations may relate to the significant and the insignificant, but once voluntarily and knowingly entered into are binding on the parties. A stipulation to a particular fact is an acceptance of the truth and accuracy of that fact. It is tantamount to a contract between the parties to the stipulation. As with any contract, a party may refuse to enter into a proposed stipulation or may seek to modify or limit its scope or purpose.

In this instance neither appellant expressed any reservation about entering into the proposed stipulations nor is there any indication that they sought to limit their scope in any manner. Appellant’s contention that the Board had the burden of establishing the purpose for the stipulation is without legal support or merit. Appellants had the opportunity to object on grounds of hearsay and to express any other concerns or reservations about the proposed stipulations, but did not do so. Absent some evidence to the contrary, the documents admitted must be considered as admitted for all purposes.

In addition to the documents admitted, the Board of Stewards took sworn oral testimony from the appellants. The oral testimony corroborated the documentary evidence and established conclusively that JB was the trainer of the horse, CH-B was the groom for the horse and responsible for its care and attendance, CH-B administered a substance containing Heptaminol to the horse, the horse raced in and won a sanctioned race, a urine sample obtained from the horse following the race tested positive for Heptaminol, and that Heptaminol is a prohibited substance.

Further, there is no evidence that the Board of Stewards abused its discretion by acting outside its jurisdiction or failing to accord a fair hearing to appellants.

Issue #2. May a licensed trainer and/or the licensed groom of a horse be disciplined by the Board if the horse tests positive for a prohibited substance, regardless of the time of administration?

Appellants assert that they may not be the subject of discipline because Business and Professions Code section 19581 only prohibits the administration of a substance “after it has been entered to race”. The purpose of regulating equine medication is to ensure that a horse does not race with a prohibited substance in its system. CCR section 1843(a) prohibits a horse with a prohibited substance in its system from participating in a race. CCR section 1887 provides that the horse’s trainer is strictly liable for the condition of his horse and he and horse’s groom may be fined or suspended upon a positive test result for a prohibited

substance. (*Sandstrom v. California Horse Racing Board* (1948) 31 Cal.2d 401). And CCR section 1859.5 provides that a positive test for a prohibited substance is a violation that results in summary disqualification of the animal from the race. None of these provisions require the Board to establish the time the prohibited substance was administered. Nor are these provisions inconsistent with the language of Business and Professions Code section 19581, the essence of which is repeated in CCR section 1843(b).

In *Sandstrom, supra*, 406, the California Supreme Court discussed the CHRB “trainer insurer” rule thusly:

“The import of this rule is to impose strict responsibility upon the trainer for the condition of the horse. The language of the rule can admit of no other conclusion. Two factual elements must exist to bring the rule into operation; first, the licensee must be the trainer of the horse, and secondly, the analysis must show the presence of a stimulating or depressive drug or chemical.”

The Board had convincing evidence before it demonstrating that JB was the horse’s trainer and that CH-B was the groom with care and attendance of the horse and that she had administered the prohibited substance to the horse. Once a positive test result obtained the liability of each was established. It is noted that pursuant to CCR section 1843(d) the positive test result establishes prima facie liability, but neither appellant asserted a defense to the result pursuant to CCR section 1888. That section provides a defense to the a positive test result if the trainer or groom (in this instance) can demonstrate that they were denied a fair hearing or that they “made every reasonable effort to protect the horse[s] in his care from tampering by unauthorized persons”.

The Board properly imposed discipline against JB and CH-B for violations of CCR section 1843(a), (b) and (d) and CCR section 1887.

Issue #3. May the Board impose a penalty for an equine medication violations in the absence of Board adopted regulations providing specific penalties for such violations?

Appellants contend that the CHRB may not impose any penalty in this case because it has failed to adopt penalty regulations as required by law and has instead relied on a guideline, criterion, standard of general application or other rule that has not been adopted as a regulation, contrary to Government Code section 11425.50(e). Appellants relied on the following sections of the Horse Racing Law pertaining to equine medication:

Business and Professions Code section 19580(a), which states in part that “the board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horseracing in the state.”

Business and Professions Code section 19581, which states in part that “no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horserace, unless the board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof.”

Business and Professions Code section 19582(a), which states in pertinent part that “violations of Section 19581, as determined by the board, are punishable as set forth in regulations adopted by the board. The board shall classify violations of Section 19581 based upon each class of prohibited drug substances, prior violations within the previous three years, and prior violations within the violator’s lifetime. The board may provide for suspensions of not more than three years..., monetary penalties of not more than ten thousand dollars (\$10,000) and disqualification from purses. The punishment for second and subsequent violations of Section 19581 shall be greater than for first violations for violations of each class of prohibited drug substances.”

Appellants contend that the only basis upon which the CHRB may exercise its discretion and impose a penalty for an equine medication violation is to have in place a regulation or regulations that comport with the provisions of Business and Professions Code sections 19580, 19581 and 19582. Additionally, appellants argue that the Business and Professions Code section 19582(b) provides that any penalties other than those noted must be “provided by law”. The section states in pertinent part that:

“The penalties provided by this section are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant but are cumulative to, other penalties or sanctions.”

Appellant’s interpretation of the foregoing section is far too narrow and does not further the legislative intent of the State’s Horse Racing Law. Neither §19581 nor §19582 compels the conclusion advanced by respondent that in the absence of regulations adopted pursuant to those sections no discipline can be imposed for medication violations. The lack of regulations concerning the “range” of discipline does not bar discipline for medication violations of the Horse Racing Law. (*People v. Harner* (1989) 213 Cal.App.3d 1400; *Lavin*, *supra* 263).

CCR section 1405 provides that violation of any provision of the CHRB Rules, “whether or not a penalty is fixed therein, is punishable in the discretion of the Board by revocation or suspension of any license, by fine, or by exclusion from all racing enclosures under the jurisdiction of the Board, or by any combination of these penalties. ...”. Likewise, Title 4 CCR section 1528 states in part that the stewards “may suspend the license of anyone whom they have authority to supervise or they may impose a fine or they may exclude from all inclosures [sic] in this State or they may suspend, exclude and fine.” Thus, completely independent of Business and Professions Code section 19582, the CHRB has the authority to impose a monetary fine for violation of CHRB rules pertaining to equine medication, and appellant’s argument to the contrary is without merit.

LEGAL CONCLUSION

Upon review of the entire record of the proceedings held before the Board of Stewards, the rulings imposing ninety day and one hundred day suspensions against JB and CH-B, respectively, for violations of CCR sections 1843(a), (b) and (d) and 1887 were properly imposed and based on substantial evidence.

ORDER

Rulings #9 and #10 issued by the Board of Stewards on April 24, 2000 against Appellants Jeffrey Boyd and Corrine Hill-Boyd are **AFFIRMED**.

Dated: _____

WILLIAM O. HOOVER
Administrative Law Judge
Office of Administrative Hearings